

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

RITA HAGWELL, JANET WOLD, AND
MOLLY CHAMBERLIN LEE,

Petitioners,

v.

CITY OF POULSBO,

Respondent.

CASE No. 12-3-0006

(Hagwell)

FINAL DECISION AND ORDER

SYNOPSIS

The Poulsbo Comprehensive Plan was updated through the adoption of Poulsbo City Ordinance 2012-09, which included the Urban Paths of Poulsbo Plan (UPP). Petitioners challenged the action for inadequate public notice and participation and as potentially compromising private property rights and anadromous fisheries.

The Board found that the petitioners were not able to meet their burden of proof for noncompliance. The Petition was dismissed.

I. PROCEDURAL BACKGROUND

On June 27, 2012, the Poulsbo City Council enacted City of Poulsbo Ordinance 2012-09, adopting the 2011-2012 Poulsbo Comprehensive Plan amendments. Petitioners filed a Petition for Review of that portion of the changes known as the Urban Paths of Poulsbo Plan (UPP) on September 11, 2012. A prehearing conference was held telephonically on October 12, 2012 with Petitioners appearing *pro se*. At the request of the parties, the Board provided a settlement officer, Board member William Roehl, to mediate a settlement

1 discussion. A settlement conference was held, but the parties were unable to resolve this
2 dispute.

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4 The parties subsequently filed their prehearing briefs and exhibits. The Hearing on the
5 Merits (HOM) was convened on January 28, 2013 in the Poulsbo City Council Chambers.
6 Present for the Board were Cheryl Pflug, presiding officer, Charles Mosher, and Margaret
7 Pageler. Petitioners Rita Hagwell, Janet Wold, and Molly Chamberlin Lee appeared *pro se*.
8 The City of Poulsbo appeared by its attorney, James Haney with Poulsbo Planning Director
9 Barry Berezowsky, Poulsbo Mayor Becky Erickson and others also in attendance. Kathleen
10 Hamilton of Buell Realtime Reporting provided court reporting services.
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12 The hearing provided the Board an opportunity to ask questions clarifying important facts in
13 the case and providing clear understanding of the legal arguments of the parties.
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16 **II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF,**
17 **AND STANDARD OF REVIEW**

18 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and
19 amendments to them, are presumed valid upon adoption.¹ This presumption creates a high
20 threshold for challengers as the burden is on the petitioners to demonstrate that any action
21 taken by the City is not in compliance with the GMA.²
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23 The Board is charged with adjudicating GMA compliance and, when necessary, invalidating
24 noncompliant plans and development regulations.³ The scope of the Board's review is
25 limited to determining whether a City has achieved compliance with the GMA only with
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29 _____
30 ¹ RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and applicable
31 development regulations] comprehensive plans and development regulations, and amendments thereto,
32 adopted under this chapter are presumed valid upon adoption.

² RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity] the
burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this
chapter is not in compliance with the requirements of this chapter.

³ RCW 36.70A.280, RCW 36.70A.302.

1 respect to those issues presented in a timely petition for review.⁴ The GMA directs that the
2 Board, after full consideration of the petition, shall determine whether there is compliance
3 with the requirements of the GMA.⁵ The Board shall find compliance unless it determines
4 that the City's action is clearly erroneous in view of the entire record before the Board and in
5 light of the goals and requirements of the GMA.⁶ In order to find the City's action clearly
6 erroneous, the Board must be "left with the firm and definite conviction that a mistake has
7 been committed."⁷
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10 In reviewing the planning decisions of cities and counties, the Board is instructed to
11 recognize "the broad range of discretion that may be exercised by counties and cities" and
12 to "grant deference to counties and cities in how they plan for growth."⁸ However, the City's
13 actions are not boundless; their actions must be consistent with the goals and requirements
14 of the GMA.⁹
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16 Thus, the burden is on Petitioners to overcome the presumption of validity and demonstrate
17 that the challenged action taken by the City is clearly erroneous in light of the goals and
18 requirements of the GMA.
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20 ⁴ RCW 36.70A.290(1).

21 ⁵ RCW 36.70A.320(3).

22 ⁶ RCW 36.70A.320(3).

23 ⁷ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008) (Citing to *Dept. of Ecology v.*
PUD District No. 1 of Jefferson County, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe,*
et al. v. WWGMHB, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d
24 488, 497-98, 139 P.3d 1096 (2006).

25 ⁸ RCW 36.70A.3201 provides, in relevant part: In recognition of the broad range of discretion that may be
26 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the
27 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
28 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
29 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
30 while this chapter requires local planning to take place within a framework of state goals and requirements, the
31 ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and
32 implementing a county's or city's future rests with that community.

⁹ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by the
goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give
the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary and
capricious standard. *Id.* at 435, Fn.8.

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III. BOARD JURISDICTION

The Board finds that the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2) and RCW 90.58.190(2). The Board finds that Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2). The Growth Management Act gives the Board jurisdiction to review adoption of Comprehensive Plan Amendments to determine whether they are in compliance with the Growth Management Act. RCW 36.70A.280(1)(a). The Board finds that it has jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1)(a).

IV. PRELIMINARY MATTERS

At the outset of the hearing on the merits the parties provided the Board with several illustrative exhibits:

- A. Urban Paths of Poulsbo Conceptual Map, printed on April 24, 2012.
- B. Urban Paths of Poulsbo Conceptual Map, printed on May 16, 2012.
- C. Case No. 12-3-0006 (Hagwell) Appeal Map, dated October 18, 2012.

The April 24, 2012 map contains the City staff's annotations following the April 18 public hearing and is in the Index as #659, part of the May 1, 2012 Adoption Document. The May 16, 2012 Map reflects the City Council's final action at its May 16, 2012 meeting and is Index #694. These exhibits assisted the Board in its understanding of the City's action and the Petitioners' dispute.

The October 18, 2012 Map superimposes the adopted Urban Paths of Poulsbo Conceptual Map over other information from the comprehensive plan, including platted lots, designated open space (Fig. NE-5) and fish and wildlife habitat areas (Fig. PRO-1). The Board does not usually consider exhibits that were not part of the record prior to adoption of the challenged ordinance. Under the circumstances here, the Board finds the map illustrates land development patterns and environmental features in the area that were present prior to the City's action. The exhibit assisted the Board in understanding the City's action and the

Petitioners' dispute. The Case No. 12-3-0006 (Hagwell) Appeal Map, dated October 18, 2012, is admitted as HOM Supplemental Exhibit 1.

V. ISSUES AND DISCUSSION

Issue 1: Did the City of Poulsbo violate GMA Goal 6¹⁰ and RCW 36.70A.370 by failing to appropriately consider the private property rights of landowners pursuant to the Attorney General's December 2006 Advisory Memorandum¹¹ when it adopted Ordinance 2012-09, or by acting in an arbitrary and discriminatory manner when it delineated paths over privately held land in its Urban Paths of Poulsbo Plan?

RCW 36.70A.020(6) Property Rights states:

Private Property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

RCW 36.70A.370 Protection of Private Property provides:

(1) The state attorney general shall establish ... an orderly, consistent process, including a checklist if appropriate, that better enables state agencies and local governments to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property ...

(2) Local governments that are required or choose to plan under RCW 36.70A.040 and state agencies shall utilize the process established by subsection (1) of this section to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property.

Petitioners argue that the City violated GMA Goal 6 (RCW 36.70A.020(6)) by failing to adequately consider private property rights when it adopted the UPP. In deciding a challenge based on Goal 6, the Board asks whether (1) the challenge is within the Board's jurisdiction; (2) whether the local government took landowner rights into consideration in its

¹⁰ RCW 36.70A.020(6).

¹¹ Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property, [http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Takings/2006%20AGO%20Takings%20Guidance\(1\).pdf](http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Takings/2006%20AGO%20Takings%20Guidance(1).pdf)

1 procedure; (3) whether the challenged action was arbitrary; and (4) whether the challenged
2 action was discriminatory.¹²

3
4 Petitioners acknowledge that the Board has no authority to determine the constitutional
5 question of whether the City's comprehensive plan amendments have resulted in an actual
6 "taking" of property¹³ and argue the other three questions:

7
8 A. Whether the City gave time and consideration to whether its actions constituted a
9 taking, citing *Laurel Park*, WWGMHB Case No. 09-2-0010 FDO at 10.¹⁴

10 Examining the Record, the Board notes a consistent deference to private property concerns.

11
12 The Poulsbo Trails Committee Fact Sheet states:

13 We expect to locate trails on public properties and rights-of-way and will
14 consider land or easements offered by willing owners of private property. The
15 city has no intention of taking land for trails through eminent domain."¹⁵

16 The Trails Committee October 2011 report explicitly addresses trails on private property in a
17 section entitled Connectivity across private property,¹⁶ which reads:

18 ... In some instances, the proposed trail network shows connections across
19 private land. These are shown on the maps with a pink "conceptual" line.
20 Where conceptual connections are shown across private property they are
21 intended to indicate general desirable areas to be linked, and future
22 negotiations with the interested and willing property owners might take place.
23 Bikeways and/or walkways will not be developed across private land without
24 the owner's consent or a preexisting easement. *Locating trails on private*
25 *property will be voluntary on the part of the private property owner.*
26 (Emphasis added.)
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29 ¹² *Keesling v. King County*, CPSGMHB Case No. 05-3-0001, Final Decision and Order (July 5, 2005), p. 28-
30 29.

31 ¹³ Petitioner's Opening Brief, p. 3 (citing *Laurel Park Community v. City of Tumwater*, WWGMHB Case No. 09-
32 2-0010, Final Decision and Order (October 13, 2009), p. 10 and *Keesling*, supra, p. 29).

¹⁴ Petitioners' Brief, p. 3.

¹⁵ Exhibit 188.

¹⁶ Exhibit 416, Urban Trails of Poulsbo, October 2011, p. 20.

1 Significantly, the Findings section of Ordinance 2012-09 itself reads:

2 A. ... Residents were concerned about the possibility of recreational paths
3 and trails being located on their properties and about the potential for the
4 City to acquire easements across their properties through the use of
5 eminent domain.

6 B. ... the staff and planning commission have been mindful of Goal 6 of the
7 GMA (RCW 36.70A.040(6), which provides that private property shall not
8 be taken ... language in the comprehensive plan polices indicates that
9 property owner willingness will determine the location of trails.

10 C. Members of the public ... requested further assurances as to the Council's
11 intent to acquire property only from willing landowners. In response, the
12 Council determined that additional language should be inserted into the
13 policies and figures indicating that the City will work only with willing
14 property owners in acquiring right of way trails. The amendments are
15 reflected in the text attached to this ordinance.

16 D. The Council determined that Figure PRO-3 should be revised to reflect the
17 intent not to take private property....¹⁷

18 **The Board finds** that there is ample evidence in the record that the City Planning
19 Commission, staff, and City Council in fact gave time and consideration to the rights of
20 private property owners.

21 B. Whether the Urban Paths of Poulsbo Plan is both arbitrary and discriminatory
22 because it places a greater burden on some property owners' legally-protected rights to
23 use, enjoy, or dispose of their land than on the rights of other owners.¹⁸

24 The Board defines an arbitrary decision as an "unreasoned" decision, "one that is not
25 merely an error in judgment but is 'baseless' and 'in disregard of the facts and
26 circumstances'".¹⁹ "Discriminatory" is defined as "to single out a particular person or class
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31 ¹⁷ Exhibit 720, Ordinance 2012-09, p. 3; See also Exhibit 696, p. 41.

32 ¹⁸ Petitioners' Brief pp. 3-4.

¹⁹ *Cave/Cowan v. City of Renton*, CPSGMHB Case No. 07-3-0012 Final Decision and Order (July 30, 2007) at 17 (citing *Keesling v. King County*, CPSGMHB Case No. 05-3-0001, Final Decision and Order (July 5, 2005).

1 of persons for different treatment without a rational basis upon which to make the
2 segregation.”²⁰

3
4 Petitioners point to City decisions to provide on-street links in lieu of locating future trails on
5 portions of properties that are already developed, asserting that on-street links should be
6 planned for all portions of the envisioned trail that could be located on property currently
7 held by owners who refuse to allow trails on their private property. The City counters that,
8 where existing structures were determined to make construction of walking paths
9 impractical, those routes were deleted from consideration.²¹ In contrast, undeveloped
10 properties, which may become available for trail construction at some future date, do not
11 present the same physical barriers or problems of proximity to dwellings.
12

13
14 **The Board finds** that the City’s decision to eliminate further consideration of properties
15 where trail construction is physically impractical was reasonable, not arbitrary, and does
16 provide a rational basis for planning to locate trails elsewhere.
17

18 One of the identified goals of the UPP is to connect “people to nature.”²² The City argues
19 the Poulsbo Trails Committee “felt strongly that a forested trail experience is different from a
20 street trail experience and that the Poulsbo should have both.”²³
21

22 Petitioner Hagwell in particular argues that adoption of the UPP will have a “debilitating
23 effect on the value of [her] five acres,” which are largely undeveloped, due to “condemnation
24 blight.” The Board is not persuaded. Respondents correctly assert that “condemnation
25 blight” means “substantial impairment” of a property’s marketability as a result of the
26 expression of “an unequivocal intention to take the specific property” by a condemning
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30 ²⁰ *Bayfield Resources/Futurewise v. Thurston County*, WWGMHB Case No. 07-2-0017c, Final Decision and
Order at 28 (April 17, 2008).

31 ²¹ Respondent’s Prehearing Response, p. 14; See also Exhibit 613 (Petitioner’s Opening Brief); Exhibit 696,
p.42, aerial photo.

32 ²² Vision Statement, Poulsbo Trails Plan.

²³ Respondent’s Prehearing Brief p. 11, See also Exhibit 260, p. 1.

1 authority.²⁴ Here, petitioners made no attempt to substantiate a claim of diminished
2 property value, and the City has expressed the unequivocal intention NOT to take private
3 property by eminent domain. The Board can conceive of no process by which a
4 “conceptual” trail that, as previously discussed, cannot be constructed without the property
5 owner’s consent, will “significantly impair” the property owner’s use, enjoyment, right to
6 exclude, and ability to receive full market value at sale.
7

8 **The Board finds** that there is a rational basis for the City to include plans for future trail
9 links that may pass through undeveloped, “natural” areas; thus, the UPP is not
10 discriminatory. Petitioners’ argument that the City’s planning was arbitrary and
11 discriminatory fails.
12

13
14 C. Whether the City satisfied the process identified in the Attorney General’s Advisory
15 Memorandum.²⁵

16 The Western Washington Growth Management Hearings Board identified five elements
17 pertaining to the regulation of private property helpful in evaluating proposed actions under the
18 Attorney General’s Advisory Memorandum:²⁶
19

- 20 (1) the permanent or temporary physical occupation of private property,
- 21 (2) the deprivation of all economically viable use of the property,
- 22 (3) the denial or diminishment of a fundamental attribute of property ownership,
- 23 (4) the requirement for dedication of property or granting of an easement, and
- 24 (5) the severity of impact on a property owner’s economic interest.

25 The Board notes that the authority is persuasive but not controlling. More relevant to the case
26 at hand, the Advisory Memo pertains to issues to be considered prior to taking regulatory
27 actions. The UPP is not a regulatory action in that it imposes no limitations on existing uses of
28 private property. Even if it were a regulatory action, the Advisory Memo merely requires that
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30 ²⁴ *Lange v. State*, 86 Wn.2d 585, 595, 547 P.2d 282 (1976).

31 ²⁵ Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property,
32 [http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Takings/2006%20AGO%20Takings%20Guidance\(1\).pdf](http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Takings/2006%20AGO%20Takings%20Guidance(1).pdf)

²⁶ *Olympic Stewardship Foundation, et al. v. Jefferson County*, WWGMHB 08-2-0029c, Final Decision and Order (November 19, 2008) at 42-43.

1 local government “consider” these aspects. The question before the Board, therefore, merely
2 repeats Issue 1 A: whether there is evidence in the Record to support the finding that the City
3 considered private property rights in adopting Ordinance 2012-09. As above, **the Board finds**
4 that there is.

5
6 The Board notes the *Olympic Stewardship* authority is persuasive but distinguishable. More
7 relevant to the case at hand, RCW 36.70A.370(1) specifies that the Attorney General’s
8 Advisory Memorandum concerns “proposed regulatory or administrative actions.”²⁷ The
9 statute requires local governments to utilize the Advisory Memo process to assure that
10 regulatory and administrative decisions do not impair property rights. The UPP is not a
11 regulatory action. It is a legislative action adopting a comprehensive plan amendment. The
12 City advised the Board at hearing that it trains its permit staff to use the Advisory Memo
13 analysis in making regulatory decisions.²⁸ The Board has previously held Poulsbo’s plan
14 complies with the GMA in this regard.²⁹

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17 **The Board finds** the City’s adoption of the UPP did not violate RCW 36.70A.370. Petitioners
18 have not satisfied their burden to show that the City failed to consider private property rights or
19 that the UPP process was arbitrary or discriminatory. Issue 1 is dismissed.

20
21 **Issue 2: Did the City of Poulsbo fail to provide adequate notice and public**
22 **participation and coordinate between jurisdictions as required by the GMA, RCW**
23 **36.70A.020(11), 36.70A.035, 36.70A.130(2)(a), and 36.70A.140 in the adoption of**
24 **Ordinance 2012-09?**

25 Petitioners alleged that the City repeatedly modified documents during the adoption process
26 without providing the public and other jurisdictions timely notice of those modifications and
27 an opportunity to adequately respond. As an example, Petitioners argue that a proposed
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30 ²⁷ *Olympic Stewardship* concerned the County’s adoption of development regulations. See affirming decision,
Olympic Stewardship Foundation v. WWGMHB, 163 Wn.App.12 (2011).

31 ²⁸ The City cites Policy PI-2.6 of the comprehensive plan: “Ensure that the City’s development regulations do
32 not result in an unconstitutional taking of private property by ensuring City staff are familiar with Washington
State Attorney General’s ‘warning signs’ for unconstitutional takings of private property.”

²⁹ *Wold v. City of Poulsbo*, CPSCMHB Case No. 10-3-0005c, Final Decision and Order (August 9, 2010) at 74.

1 trails map was presented by Mayor Erickson at the April 18, 2012 City Council hearing and
2 that there was no opportunity for the public to review the map prior to the hearing date.³⁰
3 The City counters that the City Council continued the public hearing to May 16, 2012 in
4 response to the public's request for more time to review the map, and that, regardless, the
5 map³¹ presented by Mayor Erickson was superseded by a new, more detailed map which
6 was proposed by City staff in the City's proposed Adoption Document for the 2011-2012
7 Comprehensive Plan Amendments on May 1, 2012 and made available on the City's
8 website the same day.³² Additionally, interested citizens, including Petitioners Wold and
9 Lee, received two specific e-mail notices of the Adoption Document's availability on May 1.³³
10 Petitioners complain that these maps were "unreadable"³⁴ on the website, but do not
11 present evidence that they requested and were denied readable copies.
12

13
14 Petitioners did not brief or argue that the City failed to coordinate between jurisdictions and
15 that portion of Issue 2 is deemed abandoned.
16

17 **The Board finds** that Petitioners have not satisfied their burden to show that the City failed
18 to provide adequate public notice and participation.
19

20 Petitioners also allege that the City violated the GMA's public participation requirements
21 when the Poulsbo City Council amended the Urban Paths of Poulsbo Conceptual Map after
22 the close of the public hearing on May 16.³⁵ The Board is not persuaded. The GMA does
23 not preclude a local government from amending legislation after, and quite possibly in
24 response to, public comment. RCW 36.70A.035(2) requires that if legislative changes or
25 amendments proposed after the public comment period has closed, the process must be
26 reopened for public consideration and comment. However, "an additional opportunity for
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30 ³⁰ Petitioners' Opening Brief, p. 20.

31 ³¹ Exhibit 606.

32 ³² Exhibit 637.

33 ³³ Exhibits 645, 636.

34 ³⁴ Petitioners' Prehearing Brief, p. 20.

35 ³⁵ Petitioners' Prehearing Brief, p. 20.

1 public review and comment is not required” if “the proposed change is within the scope of
2 the alternatives available for public comment.”

3
4 As this Board held in *City of Shoreline, et al. v. Snohomish County*,

5 *Burrows* and other Board decisions establish that requirements for effective
6 notice and fair process do not mandate that the final language of the
7 [amendment] be available for public comment before it can be adopted.
8 Rather, when a proposal is amended after the public process is closed, the
9 Board must determine whether it was "within the scope of alternatives
10 available for public comment," as set forth in RCW 36.70A.035(2), or whether
11 new notice and opportunity for comment is required.³⁶ (Footnotes omitted.)

12 Petitioners make much of the change from a “curvy” line to a straight line. However, the
13 City’s argument at the hearing demonstrated that the curvy line was employed to emphasize
14 the fact that those trail locations were “conceptual” only and would not be constructed
15 without property owner consent and appropriate site-specific review. Further, previous
16 versions of the map had contained straight lines.

17
18 **The Board finds** that the Council reasonably concluded that the curves only created
19 confusion and were unnecessary in view of explicit language in the adopted Ordinance that
20 explains the conceptual nature of private property trail segments. **The Board finds**
21 Petitioners have not demonstrated that any of the City Council’s final changes to the UPP
22 were outside the scope of the public debate.

23
24 Petitioners have not shown that the City’s public notice and participation process was clearly
25 erroneous. Issue 2 is dismissed.

26
27 **Issue 3: Did the City of Poulsbo fail to give special consideration to conservation or**
28 **protection measures necessary to preserve or enhance anadromous fisheries and**
29 **preserve wildlife as required by RCW 36.70A.020(9), 36.70A.020(10), and 36.70A.172(1)**
30 **with the adoption of Ordinance 2012-09?**

31
32 ³⁶ *City of Shoreline v. Snohomish County (Shoreline IV)*, CPSGMHB 09-3-0013c, Order on Dispositive Motions
(January 18, 2010) p. 20.

1 RCW 36.70A.172(1) reads as follows:

2 In designating and protecting critical areas under this chapter, counties and
3 cities shall include the best available science in developing policies and
4 development regulations to protect the functions and values of critical areas.
5 In addition, counties and cities shall give special consideration to
6 conservation or protection measures necessary to preserve or enhance
7 anadromous fisheries.

8 Petitioners contend that the City violated RCW 36.70A.172(1) when it adopted the UPP
9 because the City failed to give "special consideration to conservation and by not
10 undertaking protective measures to preserve or enhance anadromous fisheries." The City
11 responds that the UPP does not designate or protect critical areas and, therefore, does not
12 fall under the mandate that special consideration be given to anadromous fisheries
13 contained in RCW 36.70A.172(1).

14
15 The plain language of RCW 36.70A.172(1) applies to designating and protecting critical
16 areas. The UPP does not designate critical areas, nor does it exempt any existing critical
17 areas from the Critical Areas Ordinance (CAO) set forth in Chapter 16.20, Poulsbo
18 Municipal Code. As amended by the adoption of Ordinance 2012-09, the City's
19 Comprehensive Plan Policy PRO-4.9 explicitly subjects the public paths envisioned in the
20 UPP to the City's CAO:
21

22 When a public trail is designed to be located within a regulated critical area,
23 professional consultant services or other qualified resources shall be
24 consulted to ensure potential conflict between path construction and wildlife
25 habitat is appropriately mitigated. Trail development within critical areas is
26 subject to the requirements of the City's Critical Areas Ordinance.³⁷

27 The CAO has explicit provisions concerning trails in critical areas. The regulations
28 recognize the threat of disturbance to wildlife habitat, including areas essential to
29 endangered-species, and recommend that trails be located outside required buffers.³⁸
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31
32 ³⁷ Poulsbo Comprehensive Plan, Chapter 8.3, Parks, Recreation, and Open Space Goals and Policies, PRO
4.9.

³⁸ PMC 16.20.235, G.1-G.4, H.4; PMC 16.20.320, G.1-5.

1 **The Board finds** that the City's adoption of the UPP did not violate RCW 36.70A.172(1).

2
3 RCW 36.70A.020 sets forth the GMA's planning goals:

4 RCW 36.70A.020(9) Open space and Recreation. Retain open space,
5 enhance recreational opportunities, conserve fish and wildlife habitat,
6 increase access to natural resource lands and water, and develop parks and
7 recreation facilities.

8 RCW 36.70A.020(10) Environment. Protect the environment and enhance the
9 state's high quality of life, including air and water quality, and the availability
10 of water.

11 As this Board held in *Wold, et al. v. City of Poulsbo*, overlapping uses within critical areas
12 and their buffers is not *per se* a violation of GMA planning goals:

13 The Board is aware of the overlapping values of the designations for open
14 space, habitat, and critical area buffers. For example, —open space corridors
15 can serve a variety of purposes such as —recreation, wildlife habitat, trails,
16 and connection of critical areas. Buffers for wetlands provide habitat and open
17 space; trails provide recreation and wildlife corridors, and the like. ... the CAO
still governs how such buffer areas must be protected. (Footnote omitted.)³⁹

18 The UPP recognizes and attempts to balance the GMA goals for more recreational
19 opportunities, recreational facilities, and public access to water and the natural environment
20 – provided by a system of trails – with protection of fish and wildlife, water quality, and open
21 space. The Board finds Poulsbo was guided by GMA Planning Goals 9 and 10.

22 The Board concludes that Petitioners failed to carry their burden of proof in demonstrating
23 the City's adoption of Ordinance 2012-09 was not guided by RCW 36.70A.020(9) and RCW
24 36.70A.020(10). Issue 3 is dismissed.
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28 VI. ORDER

29 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
30 parties, the Growth Management Act, prior Board Orders and case law, having considered
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³⁹ *Wold, et al. v. Poulsbo*, CPSGMHB 10-3-0005c, Final Decision and Order, August 9, 2010, pp. 32-33.

1 the arguments of the parties, and having deliberated on the matter, the Board finds and
2 concludes that the enactment of Ordinance 2012-09 by the City of Poulsbo complies with
3 the goals and requirements of the GMA as denoted in the Petitioners' issue statements.
4 The case of *Hagwell, et al. v. City of Poulsbo*, Case No. 12-3-0006 is DISMISSED.

5
6 SO ORDERED this 11th day of March, 2013.
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Cheryl Pflug, Board Member

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11 _____
Margaret Pageler, Board Member

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13 _____
Charles Mosher, Board Member
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18 **Note: This is a final decision and order of the Growth Management Hearings Board**
19 **issued pursuant to RCW 36.70A.300.⁴⁰**
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29 _____
30 ⁴⁰ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
31 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.
32 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent
upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings
Board is not authorized to provide legal advice.